



Final Regulation Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC 30 -120
Regulation title	Waivered Services
Action title	Money Follows the Person Program Changes
Date this document prepared	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

The Department of Medical Assistance Services received approval of Virginia's Money Follows the Person (MFP) Demonstration application from the Centers for Medicare and Medicaid Services (CMS). The Demonstration's vision is to create a system of long-term services and supports that enables available funds to "follow the person" by supporting individuals who choose to transition from long-term care institutions into the community.

MFP is changing services to six Medicaid home and community based care waivers: 1) adding the services of Personal Emergency Response System (PERS), Medication Monitoring, and Transition Services to the Technology Waiver; 2) adding Transition Coordination services, Environmental Modifications (for MFP participants only), Assistive Technology (for MFP participants only), and Transition Services to the EDCD Waiver; 3) adding PERS and Medication Monitoring, Environmental Modifications (for MFP participants only), Assistive Technology (for MFP participants only), and Transition Services to the HIV/AIDS Waiver; and 4) adding Transition Services to the Intellectual Disability/Mental Retardation (ID/MR) and IFDDS Waivers.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

I hereby approve the foregoing Regulatory Review Summary (Money Follows the Person Program Changes) with the attached amended Waivered Services regulations (12VAC 30-120-70; 120-90; 120-140; 120-211; 120-213; 120-225; 120-229; 120-237; 120-247; 120-700; 120-710; 120-754; 120-758; 120-762; 120-770; 120-900; 120-910; 120-920; 120-970; 120-1500; 120-1550; 120-2000; 120-2010) and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012, of the Administrative Process Act.

Date

Patrick W. Finnerty, Director

Dept. of Medical Assistance Services

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid authority as established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services. Item 302, HHH of the 2008 Appropriation Act states:

Contingent upon approval by the Centers for Medicare and Medicaid Services as part of the Money Follows the Person demonstration grant, the Department of Medical Assistance Services shall seek federal approval for necessary changes to home and community-based 1915(c) waivers to allow individuals transitioning from institutions to receive care in the community.

DMAS previously promulgated an emergency regulation, and this final regulatory action follows.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the MFP demonstration is to strengthen Virginia's long-term care services and supports using available funds to "follow the person" by supporting individuals who choose to transition from long-term care institutions into the community. The MFP demonstration is one of the Governor's set priorities for community integration of persons who reside in institutions. This initiative also reflects a strong collaborative approach with this Administration and the Legislature to coordinate and continually build upon rebalancing efforts of the Commonwealth's long-term support system (i.e., increasing the use of home- and community-based care services (HCBS) rather than institutional long-term care services). This collaborative approach has enabled the Commonwealth over the past several years to be resourceful in balancing the state's budget without cutting Medicaid long-term support services.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The state regulations that are affected by this action are the Technology Assisted (Tech) (12VAC 30-120-70, -90), HIV/AIDS (12VAC 30-120-140), Elderly or Disabled with Consumer Direction (EDCD) (12VAC 30-120-900, -910, -920, -970), Mental Retardation (ID/MR) (12VAC 30-120-211, -213, -225, -229, -237, -247), and Individual and Family Developmental Disabilities Support (IFDDS) (12 VAC 30-120-700, -710, -754, -758, -770), and Day Support Waiver for Individuals with Mental Retardation (12VAC 30-120-1500, -1550, -2000, -2010) Waivers.

These final regulations reflect the needed changes to these six HCBS waivers to support individuals who choose to transition from long-term care institutions into the community. The changes to these six waivers include: 1) adding Personal Emergency Response System (PERS), Medication Monitoring, and Transition Services to the Tech Waiver; 2) adding Transition Coordination services, Environmental Modifications (for MFP participants only), Assistive Technology (for MFP participants only), and Transition Services to the EDCD Waiver; 3) adding PERS and Medication Monitoring, Environmental Modifications (for MFP participants only), Assistive Technology (for MFP participants only), Transition Services to the HIV/AIDS Waiver; and 4) adding Transition Services to the ID/MR and IFDDS Waivers.

Two of these services, Transition Coordination and Transition Services, are new waiver services. Language has been developed based on CMS guidelines and a review of how other states define and utilize these services. In addition, existing waiver services (PERS, Medication Monitoring,

Environmental Modifications and Assistive Technology) are being expanded to other waivers in an effort to facilitate the transition from institutional living to community living.

The new services mentioned above are being added as follows: Transition Services is being added to the AIDS, EDCD, IFDDS, ID/MR and Tech Waivers to provide one-time funding (up to \$5,000 per person, per lifetime) to assist with costs incurred by individuals who are transitioning into the community. Examples of expenses include rent and utility deposits and necessary furniture. One other service, Transition Coordination, is added to the EDCD Waiver to assist institutionalized individuals transitioning into the EDCD Waiver because a case management service currently does not exist in this program. This service will be time-limited and in accordance with the timeframe specified by federal law, prior to the discharge date, during and after transition; the coordination of community-based services with the case manager if case management is available; linkage to services needed prior to transition such as housing, peer counseling, budget management training, and transportation; and the provision of ongoing support for up to 12 months after discharge date. All other HCBS waivers already have a case management service that can assist institutionalized individuals with transitioning into these programs.

Finally, this regulatory action addresses changes to units of service for provider billing purposes. DMAS is currently being directed by the federal Medicaid authority, the Centers for Medicare and Medicaid Services (CMS), to no longer use preset units of service for Medicaid Waiver reimbursement. DMAS is working with CMS to establish time-based billing for the DMAS fee schedule for Waiver services, and this is reflected in the MFP regulations.

Please Note: In the July 1, 2008 emergency regulation, enrollees in the AIDS waiver and the EDCD waiver were given access to assistive technology and environmental modification services without regard to whether the enrollee was part of the Money Follows the Person demonstration program. This final regulation makes a change in these services for these two populations. The extension of these services to all EDCD and AIDS waiver participants has led to costs in excess of the cost-savings generated through the MFP demonstration program. Due to the current budget crisis in the Commonwealth of Virginia, the Governor requested DMAS to provide areas of various program services that could be reduced or discontinued in order to provide needed savings in the DMAS budget.

In response to the Governor's budget reduction directive, DMAS is continuing access to these two services only for those AIDS and EDCD waiver enrollees who are also MFP participants. The Agency responded to the Governor's directive by limiting access to the two new services

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
 - 3) other pertinent matters of interest to the regulated community, government officials, and the public.*
- If there are no disadvantages to the public or the Commonwealth, please indicate.*

The primary advantage of these final regulations is that they allow greater support and services for individuals who choose to transition from long-term care institutions into the community. These final changes will improve the infrastructure for community-based long-term support services by adding new services to six of the HCBS waiver program.

This program will support Virginia’s implementation of the *Olmstead* decision and will complement the efforts of the recently awarded Systems Transformation Grant that aims to improve the infrastructure for community-based long-term support services.

There are no disadvantages to the public or the Commonwealth.

This final regulatory action will have a positive impact on families in that individuals who are currently residing in institutions will have the option of transferring to the community and have the opportunity to live in a more family-like environment in their communities.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

DMAS made only two technical, non-substantive changes in the final regulations that were not in the proposed regulations. In 12VAC30-120-247(A)(3), DMAS neglected to delete a reference to "an employment assistant as defined in 12VAC30-120-211" and replace it with the term "a job coach." This is corrected in the final. And in 12VAC30-120-900 [Definition of Assistive Technology (AT)], DMAS is adding a reference to the definition of AT found in 12 VAC 30-120-762 to clarify that this forms the basis for this definition.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

DMAS' proposed regulations were published in the March 2, 2009, *Virginia Register* for their public comment period from March 2, 2009, through May 1, 2009. Comments were received from Fidura and Associates; the Virginia Association of Centers for Independent Living; one individual from the Norfolk State University nursing program. A summary of the comments received follows.

Commenter	Comment	Agency response
Fidura and Associates	In the Introduction’s list of added services, it indicates that CD Supported Employment will be added to the DS and ID/MR Waivers; it is not listed as a covered	There is a reference to CDSE services in the introductory material for the publication of the proposed regulation in the Virginia Registrar (VAR 25:13, p. 2319); this statement was not made by DMAS, but by the Department of

	service in 213 or 1550	Planning and Budget. In the Discussion Document for the proposed regulations, DMAS states the following: “In addition, the Agency is still in the process of sorting out the logistics of another new service, Consumer-Directed Supported Employment. Initially DMAS intended to include this service as part of the regulation, but due to concerns about the employment classification and tax status of consumer-directed supported employment workers, the Agency is delaying the implementation of this new service pending resolution of several outstanding issues on this question.”
§§211 & 1500	Can a definition of intellectual disability be added or in some way tie it to the definition of ID/MR – we are trying to change the language	DMAS is making this change in a separate regulatory package intended for this summer. Such a change is beyond the scope of the MFP package; however, these references are changed in the final Discussion Document.
§225 A. 7.	The Services Facilitator no longer has responsibility for the CPS or the Criminal History records check – this language is out-of-date and should be brought up to date to match the PPL contract language.	DMAS will take this suggestion under advisement, but such an action is beyond the scope of the MFP final regulation.
§247	There is no definition of “employment assistant” in 211	The reference to employment assistant was inadvertently maintained. This language has been deleted to be consistent with other wavier language on supported employment.
§1550	The change from “job coach” to “employment assistant” was not made in this section; they should be consistent	This has been corrected.
Forms List	The MI/MR Level I Supplement was discontinued as a cost saving measure last Fall: Eliminate optional secondary Mental Illness/Mental Retardation Screening (\$27,667) Currently, Medicaid waiver recipients in some of the home and community-based waiver programs undergo a second screening for mental illness or mental retardation. There is no federal or state	DMAS will take this suggestion under advisement, but such an action is beyond the scope of the MFP final regulation.

	<p>requirement that this screening must be performed. This strategy eliminates the secondary screening and will likely speed up placement for waiver recipients.</p>	
DMAS 122	<p>In accordance with a Medicaid Memo of 02/10/2009 and 03/04/2009; the DMAS 122 is being discontinued.</p>	<p>DMAS will take this suggestion under advisement, but such an action is beyond the scope of the MFP final regulation.</p>
<p>Virginia Assoc of Centers for Independent Living</p> <p>CDSE</p>	<p>Virginia’s Money Follows the Person (MFP) demonstration project includes a modification to supported employment services in the Individual and Family Developmental Disabilities Support (DD) Waiver and the Mental Retardation (ID/MR) Waiver. Other than a reference on page 2319 of the March 2, 2009 <i>Virginia Register of Regulations</i> there is no incorporation of language to allow consumer direction of supported employment services.</p> <p>Recommendation Insert language for the DD and ID/MR waivers to clarify that consumer directed supported employment will be permitted.</p>	<p>Although Virginia’s MFP Demonstration did include the addition of consumer-directed supported employment as an option in the DD and MR waivers, there was opposition to including this service as part of MFP by agency-directed SE providers, who objected to the inclusion of this service. In addition, legal issues arose with Worker’s Compensation that have delayed the implementation of this service option. DMAS will continue to explore and investigate other option to make this service available in the future</p>
DMAS 122	<p>The DMAS-122 form was previously used to establish patient pay and as a communication tool between providers and local Departments of Social Services. The form has become obsolete.</p> <p>Recommendation Replace references to the DMAS-122 to documentation of patient pay throughout the regulations.</p>	<p>DMAS will take this suggestion under advisement, but such an action is beyond the scope of the MFP final regulation.</p>
Description of MFP	<p>Readers of these regulations may not be familiar with Money Follows the Person.</p> <p>Recommendation Add a definition or description of Money Follows the Person (MFP) in each of the regulations that reference MFP.</p>	<p>DMAS declines to make this suggested change.</p>
Continuation of Services	<p>The addition of assistive technology and environmental modifications in the AIDS Waiver and the Elderly or Disabled with Consumer Direction</p>	<p>The extension of these services to all EDCD and AIDS waiver participants has led to costs in excess of the cost-savings generated through the MFP demonstration</p>

	<p>(EDCD) Waiver appear to be time limited. The proposed regulations state that these services are available to enrollees who are participants in the Money Follows the Person demonstration. It was CIL’s understanding that DMAS intended to maintain these services once the demonstration was completed.</p> <p>Recommendation Throughout the document modify language related to the AIDS Waiver and the EDCD Waiver to clarify that access to assistive technology and environmental modifications services is available to participants in the MFP demonstration, and after 2011 to people who transition from nursing homes and other institutions.</p>	<p>program. Due to the current budget crisis in the Commonwealth of Virginia, the Governor requested DMAS to provide areas of various program services that could be reduced or discontinued in order to provide needed savings in the DMAS budget.</p> <p>In response to the Governor’s budget reduction directive, DMAS is continuing access to these two services only for those AIDS and EDCD waiver enrollees who are also MFP participants. The Agency responded to the Governor’s directive by limiting access to the two new services</p>
<p>Tech Waiver 12VAC30-120-70</p>	<p>The definition of Environmental Modifications is inadequate as it fails to include adaptations to the individual’s vehicle. Adaptations to an individual’s vehicle will allow the individual to have access to transportation and minimize the reliance on Medicaid funded transportation. Vehicle adaptations are permitted in the other Virginia home and community based Waivers that provide Environmental Modifications.</p> <p>Recommendation Add vehicle adaptations to the definition of Environmental Modifications.</p>	<p>DMAS will take this suggestion under advisement, but such an action is beyond the scope of the MFP final regulation.</p>
<p>Tech Waiver 12VAC30-120-70</p>	<p>The revised definition of ‘primary caregiver’ will significantly limit access to needed medical services. Defining the caregiver as someone who provides care without compensation is unnecessarily limiting. There are instances in which the caregiver could be paid for providing care and support by a funding source other than Medicaid. Individuals who have the</p>	<p>DMAS will take this suggestion under advisement, but such an action is beyond the scope of the MFP final regulation.</p>

	<p>availability of other funding to pay for the primary caregiver should not be penalized nor should individuals be discouraged from using other funding sources such as private insurance, employment wages, private resources or financial support from family members to pay for some of their care and support needs. DMAS could continue to limit the number of private duty nursing hours an individual can receive with Medicaid funding. Restricting people with disabilities by requiring them to only live with or receive support from nonpaid caregivers is overreaching, paternalistic and unrealistic. The Medicaid program should be more current and recognize that people with disabilities, including those with the most significant of daily health care needs, can and do live independent of family members who traditionally would be the unpaid caregivers intended by DMAS. This restrictive model is no longer realistic, appropriate or desired for all individuals.</p> <p>Recommendation Modify the proposed regulation as follows: ‘...the primary person who consistently assumes the role of providing direct care and support of the individual to live successfully in the community without compensation from Medicaid for such care.</p>	
<p>AIDS Waiver 12VAC30-120-140</p>	<p>Recommendation The definition of Home and community-based care should include personal emergency response systems as a provided service.</p>	<p>DMAS will take this suggestion under advisement, but such an action is beyond the scope of the MFP final regulation.</p>
<p>AIDS Waiver 12VAC30-120-140</p>	<p>Personal Services and Preadmission Screening Definitions The acronym PAS is used in the</p>	<p>DMAS declines to make this suggested change.</p>

	<p>definitions of Personal Services and of Preadmission Screening. This is confusing when using the same acronym for two separate meanings.</p> <p>Recommendation Clarify the intended use of the acronym PAS.</p>	
<p>AIDS Waiver 12VAC30-120-140</p>	<p>Personal Services Definition Nurse delegation would allow for the provision of skilled services described in this definition.</p> <p>Recommendation Remove that ‘does not include sterile technique’ from the third sentence of this definition. Modify the last sentence of this definition to read ‘Personal assistance services can include skilled services if provided the skilled service is provided through nurse delegation.’</p>	<p>DMAS will take this suggestion under advisement, but such an action is beyond the scope of the MFP final regulation.</p>
<p>AIDS Waiver 12VAC30-120-140</p>	<p>Service Plan Definition The initial service plan may be reviewed by the preadmission screening team physician. The addition or deletion of specific services is managed by case management. The decision to change services is not certified by the physician. For example, the preadmission screening team physician may certify the provision of personal care and enteral nutrition services. After a period of time the individual and case manager may determine that respite, PERS or other available services are needed. The physician is not consulted.</p> <p>Recommendation Add ‘the initial’ before the term service plan. If the term is needed in the regulations to refer to the service plan at other times, then a definition of service plan should be established.</p>	<p>DMAS will take this suggestion under advisement, but such an action is beyond the scope of the MFP final regulation.</p>
<p>ID/MR Waiver 12VAC30-120-211</p>	<p>Companion Services Definition Many individuals with intellectual disabilities need some hands-on support for brief periods of time, for example, to balance while on stairs</p>	<p>DMAS will take this suggestion under advisement, but such an action is beyond the scope of the MFP final regulation.</p>

	<p>or to assist with clothing when using the bathroom. Other individuals with intellectual disabilities, who also have physical disabilities, may need other periodic hands-on care for assistance with activities of daily living during the time that companion services are being provided. It is impractical, cumbersome and unnecessary to develop a schedule of services in which personal assistance services would need to be provided for a limited time during the person’s 8 hour schedule for companion services. It is also extremely difficult to predict when someone will need to use the bathroom, have a snack; use the stairs or other daily and sporadic events.</p> <p>Recommendation The definition of companion services should be modified by replacing the words ‘does not entail hands-on care’ with ‘can include hands on care if periodically needed during the provision of this service’.</p>	
<p>ID/MR Waiver 12VAC30-120-225 B.8.</p>	<p>Services Facilitator Review of Timesheets The regulations require the Service Facilitator to review timesheets during the face-to-face visits. This is no longer a necessary task since Public Partnerships is responsible for verifying timesheets. In addition, as DMAS moves towards electronic submission of timesheets, individuals will not have their timesheets printed out and readily available for review by the Services Facilitator.</p> <p>Recommendation Eliminate the requirements that Services Facilitators review timesheets.</p>	<p>DMAS will take this suggestion under advisement, but such an action is beyond the scope of the MFP final regulation.</p>
<p>DD Waiver 12VAC30-120-700</p>	<p>Case Management Definition, The definition of case management refers to another regulation, 12VAC30-50-490. The referenced regulation limits case management</p>	<p>DMAS will take this suggestion under advisement, but such an action is beyond the scope of the MFP final regulation.</p>

	<p>to no more than 2 months in a 12-month cycle. Two months may not be adequate planning time for some individuals. A related service, transition coordination, does not place this two month limitation on services to assist someone with transition. DD case management should also not be limited.</p> <p>Recommendation Add language to the definition that mirrors the language used for transition coordinator, 12VAC30-120-2000 A.2. that allows services in accordance with the timeframe specified by federal law.</p>	
<p>DD Waiver 12VAC30-120-700</p>	<p>Companion Services Definition Many individuals with developmental disabilities need some hands-on support for brief periods of time, for example to balance while on stairs or to assist with clothing when using the bathroom. Other individuals with developmental disabilities who also have physical disabilities may need other periodic hands-on care for assistance with activities of daily living during the time that companion services are being provided. It is impractical, cumbersome and unnecessary to develop a schedule of services in which personal assistance services would need to be provided for a limited time during the person’s 8 hour schedule for companion services. It is also extremely difficult to predict when someone will need to use the bathroom, have a snack, use the stairs or other daily and sporadic events.</p> <p>Recommendation The definition of companion services should be modified by replacing the words ‘does not entail hands-on care’ with ‘can include hands on care if periodically needed during the provision of this service’.</p>	<p>DMAS will take this suggestion under advisement, but such an action is beyond the scope of the MFP final regulation.</p>

<p>DD Waiver 12VAC30-120-700</p>	<p>Instrumental Activities of Daily Living Definition The definition is too limiting. The same limitations do apply to the instrumental activities of daily living definition used for other Waivers. Recommendation Modify the definition of instrumental activities of daily living by adding ‘tasks such as’ before Meal preparation, shopping</p>	<p>DMAS will take this suggestion under advisement, but such an action is beyond the scope of the MFP final regulation.</p>
<p>DD Waiver 12VAC30-120-710 C.2.c</p>	<p>Emergency Access to the Waiver, DMAS does not currently maintain a waiting list of people who need emergency access to the IFDDS Waiver. This makes it difficult to state the urgency of needs that many people have while waiting for access to services. In addition, no entity is responsible to track the implications of requiring people to wait for years in order to receive critical services. Recommendation Strike ‘A waiting list of emergency cases will not be kept’.</p>	<p>DMAS will take this suggestion under advisement, but such an action is beyond the scope of the MFP final regulation..</p>
<p>DD Waiver 12VAC30-120-758 A</p>	<p>Environmental Modifications Some individuals live with two families because of shared custody and both homes need to be made accessible. A similar issue arises when grandparents provide the majority of care in their homes even though the child may reside with a working parent. Recommendation Remove the word ‘primary’ when referencing the home in which modifications can be provided.</p>	<p>DMAS will take this suggestion under advisement, but such an action is beyond the scope of the MFP final regulation..</p>
<p>DD Waiver 12VAC30-120-758 A</p>	<p>Environmental Modifications The service description for environmental modifications states that carpeting would be of general utility and not of direct medical or remedial benefit. In practice, this regulation is inadequate. If an individual needs carpet placed over a hard surface floor because crawling is the individual’s primary</p>	<p>DMAS will take this suggestion under advisement, but such an action is beyond the scope of the MFP final regulation.</p>

	<p>mode of ambulation in the home, carpeting may be needed to ensure that the individual is able to safely ambulate in the home. Another example could be the removal of carpeting and placement of a hard surface for an individual who uses a mobility device such as a wheelchair that may be too difficult to push over piled carpeting thus reducing the individual’s access to their [sic] environment.</p> <p>Recommendation Remove the reference to carpeting in the service description.</p>	
<p>DD Waiver 12VAC30-120-770 B.7.</p>	<p>Services Facilitator Review of Timesheets The regulations require the Service Facilitator to review timesheets during the face-to-face visits. This is no longer a necessary task since Public Partnerships (PPL) is responsible for verifying timesheets. In addition, as DMAS moves towards electronic submission of timesheets, individuals will not have their timesheets printed out and readily available for review by the Services Facilitator.</p> <p>Recommendation Eliminate the requirements that Services Facilitators review timesheets.</p>	<p>DMAS will take this suggestion under advisement, but such an action is beyond the scope of the MFP final regulation.</p>
<p>EDCD Waiver 12VAC30-120-910 B.1</p>	<p>Covered Services The new services of transition coordinator and transition services are only available to people who are involved in transitions from an institution to the Elderly or Disabled with Consumer Direction Waiver. The proposed regulation only indicates that assistive technology and environmental modification services are available to only people enrolled in the MFP demonstration.</p> <p>Recommendation Modify the language to clarify which services are limited to people</p>	<p>These two services are not limited to those enrolled in MFP. The descriptions of the services so limited, EM and AT, are noted as limited to MFP enrollees in their respective regulations. The definition of Transition Coordination in 12 VAC 30-120-2000 states the following in the proposed regulations, and this will remain unchanged in the final:</p> <p><u>1. Transition coordination means the DMAS-enrolled provider who is responsible for supporting the individual and family/caregiver, as appropriate, with the activities associated with transitioning from an institution to the community</u></p>

	<p>who are enrolled in the MFP demonstration.</p>	<p><u>pursuant to the Elderly or Disabled with Consumer Direction waiver.</u></p> <p>The definition of Transition Services in 12 VAC 30-120-2010 states the following in the proposed regulations, and this will remain unchanged in the final:</p> <p><u>12VAC30-120-2010. Transition services.</u></p> <p><u>A. Service description. "Transition services" means set-up expenses for individuals who are transitioning from an institution or licensed or certified provider-operated living arrangement to a living arrangement in a private residence, which may include an adult foster home, where the person is directly responsible for his own living expenses. 12VAC30-120-2010 provides the service description, criteria, service units and limitations, and provider requirements for this service.</u></p> <p><u>The individual's transition from an institution to the community shall have a transition coordinator in order to receive EDCD Waiver services or a case manager or health care coordinator if he shall be receiving services through either the HIV/AIDS, IFDDS, MR or Technology Assisted Waivers.</u></p>
<p>EDCD Waiver 12VAC30-120-2000 D.2.</p>	<p>Transition Coordinator It is an unnecessary requirement that the transition coordinator possess, at a minimum, a bachelor's degree in human services or health care. Requiring a degree is not the most important requirement for this service provider. The relevant knowledge, skills, and abilities are of paramount importance. Recommendation Modify this item to align it with the requirements for DD Case Management and CD Services Facilitation that indicate a preference for a degree, but not a requirement for a degree.</p>	<p>To ensure all Transition Coordinators are able to resolve the many complex issues that may arise during the development and implementation of a transition plan, a bachelor's degree is required.</p>

<p>Individual, Norfolk State University Nursing Program</p>	<p>This commenter supports the MFP program. This commenter expressed concern that cost containment of offered health care services should be affordable without compromising quality. This commenter supports the family impact program as it humanizes care and promotes compassion which are beneficial to the individual and the family. This commenter also supports the drug donation program but suggested excluding capsules that are not tamper-evident because of the potential to alter this method of medication administration.</p>	<p>Thank you for your comment. DMAS endeavors to maintain all quality of care standards even while containing costs, especially in such difficult economic circumstances as the current budget reductions.</p>

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12VAC30-120-70.		Definitions (Tech Waiver)	Adds definitions for “Assistive Technology” and “Transition Services” and adds clarifying language to several other definitions.
12VAC30-120-90.		Covered services and provider requirements	Adds descriptive language for Assistive Technology, Environmental Modifications and Transition Services.
12VAC30-120-140.		Definitions (AIDS Waiver)	Adds descriptive language for Assistive Technology, PERS, Environmental Modifications, Transition Coordinator and Transition Services. This final regulation limits these services to those participating in the MFP program.

12VAC30-120-211		Definitions (ID/MR Waiver)	Adds descriptive language for “Job Coach”, updates reference from American Assoc. on Mental Retardation (AAMR) to American Assoc. on Intellectual and Developmental Disabilities (AAIDD). Adds definition for “Transition Services” and adds clarifying language to several other definitions.
12VAC30-120-213.		General coverage and requirements for ID/MR waiver services.	Adds definitions for Transition Services and adds clarifying language to several other definitions.
12VAC30-120-225.		Consumer-directed model of service delivery	Adds clarifying language regarding supported employment and consumer direction.
12VAC30-120-229.		Day support services	Addresses changes to service units.
12VAC30-120-237.		Prevocational services	Addresses changes to service units.
12VAC30-120-247.		Supported employment services	Addresses changes to service units and clarifications regarding Job Coach services.
12VAC30-120-700.		Definitions (DD Waiver)	Adds clarifying language regarding Job Coach and Transition Services; updates reference from American Assoc. on Mental Retardation (AAMR) to American Assoc. on Intellectual and Developmental Disabilities (AAIDD).
12VAC30-120-710.		General coverage and requirements for all home and community-based waiver services.	Updates reference from American Assoc. on Mental Retardation (AAMR) to American Assoc. on Intellectual and Developmental Disabilities (AAIDD), and adds clarifying language regarding consumer-direction and Transitional Services.
12VAC30-120-754		Supported employment services	Adds clarifying language regarding changes to service units.

12VAC30-120-758		Environmental modifications	Adds clarifying language regarding this service. This final regulation limits these services to those participating in the MFP program.
12VAC30-120-762.		Assistive technology	Adds clarifying language regarding this service. This final regulation limits these services to those participating in the MFP program.
12VAC30-120-770		Consumer-directed model of service delivery	Discusses the requirements and standards for consumer-directed services.
12VAC30-120-900		Definitions (EDCD Waiver)	Adds clarifying language regarding Assistive technology, Environmental Modifications, Transitional Coordinator and Transition Services. This final regulation limits these services to those participating in the MFP program.
12VAC30-120-910.		General coverage and requirements for EDCCD services.	Adds clarifying language regarding Assistive technology, Environmental Modifications, Transitional Coordinator and Transition Services. This final regulation limits these services to those participating in the MFP program.
12VAC30-120-920.		Individual eligibility requirements	Removed the restriction that EDCCD Waiver enrollees cannot live in Adult Foster Care settings in order to permit individuals living in this setting to receive EDCCD waiver services; amended the restrictions on Assisted Living Facilities (ALFs) to permit individuals living in ALFs that house four individuals.
12VAC30-120-970		Personal Emergency Response System (PERS).	Updates VAC references and adds clarifying language regarding case managers.
12VAC30-120-1500		Definitions (MR Day Support Waiver)	Adds clarifying language regarding Consumer-directed model and Consumer-directed facilitator services,

			and updates references to AAMR.
12VAC30-120-1550		Day Support Services	Services: Day Support Services, prevocational services and supported employment services: describes the criteria and coverage for these services.
N/A	12VAC30-120-2000.		New Section: Transition coordinator; defines and describes requirements for receiving this service.
N/A	12-VAC30-120-2010		New Section: Transition services; defines and describes requirements for receiving this service.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There is no adverse impact on small businesses. The language amendments for the MFP Demonstration follow CMS’ requirements for program participation.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents. It does not strengthen or erode the marital commitment, but may decrease disposable family income depending upon which provider the recipient chooses for the item or service prescribed.